IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.01.2007

Coram

THE HONOURABLE MR. JUSTICE P.K.MISRA
AND
THE HONOURABLE MR. JUSTICE K.MOHAN RAM

HABEAS CORPUS PETITION No.1139 of 2006

M.Mahendran .... Petitioner

-Vs.-

1. The District Magistrate & District Collector
Villupuram District - Villupuram

2. The Secretary to Government
Prohibition & Excise Department
Fort St. George, Chennai - 600 009. .... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus calling for the records pertaining to the order of the 1st respondent dated 26.09.2006 in C2/43323/2006 detaining the detenue Mayakannan son of Pavadi as a Bootlegger under Tamil Nadu Act 14/1982 and set-aside the same and direct the respondents to produce the said detenue now detained in the Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mrs. Mythili Srinivas.
For Respondents: Mr. M.Babu Muthu Meeran, A.P.P.,

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O R D E R

(Order of the Court was made by K.Mohan Ram, J.)

Heard Mrs.Mythili Srinivas learned counsel appearing for the petitioner and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor for the respondents. The detenu was detained by an order dated 26.09.2006 on the allegation that he is a Bootlegger. This Habeas Corpus Petition has been filed by the son of the detenu challenging the order of preventive detention.

2. The learned counsel for the petitioner put forth the following submissions:-

The occurrence on the basis of which the order of detention was passed took place on 15.09.2006 at 07.30 hrs, the detenu was arrested at the spot at 09.00 hrs and contrabands were seized under a cover of mahazar at 10.15 hrs and the illicit distilled arrack was destroyed at the spot at 10.45 hrs under cover of a destruction mahazar. The detenu was brought to Kachirapalayam Police Station at 12.00 hrs along with the seized properties and a case was registered in Kachirapalayam Police Station in Crime No.258 of 2006 under Sections 4(1)(i), 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act 1937 (hereinafter referred to as "the T.N.P.Act") but in the arrest memo, which is available at page 91 of the

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paper book, Crime No.258 of 2006 is mentioned while the date and time of arrest is mentioned as 15.06.2006 at 09.00 hrs. However, from the First Information Report available at page 73 of the paper book, it is seen that the information regarding the commission of crime was received only at 12.00 hrs on 15.09.2006 and at that point of time the First Information Report was registered and Crime number was assigned. In the said backdrop the learned counsel for the petitioner submitted that there was non-application of mind on the part of the Detaining Authority to such a glaring discrepancy.

3. If the arrest was made at 09.00 hrs on 15.09.2006 and the case was registered at 12.00 noon on the same day, it is un-understandable as to how the Crime number was given in the arrest memo even at the time of arrest at 09.00 hrs and further in the arrest memo, the date and time of arrest are mentioned as 15.06.2006 at 09.00 hrs. It was the duty of the Detaining Authority to apply his mind and find out this apparent discrepancy before passing the order of detention.

4. The learned counsel for the petitioner submitted that Crime No.235 of 2006 is referred to as the fourth adverse case. An information received at 21.00 hrs on 31.08.2006 a case is registered in Crime No.235 of 2006 at 21.00 hrs for offences under Section 4(1)(aaa) and 4(1-A) of the T.N.P.Act and the First Information Report is available at page 40 of the paper book. But in the arrest memo which is available at page 45 of the paper book it is stated that as if the accused was arrested on 15.06.2006 at 09.00 hrs and in the arrest memo the Crime Number is mentioned as 235 of 2006 and in that the signature of the accused has been obtained. According to the learned counsel when the occurrence itself is said to have taken place at 20.00 hrs on 31.08.2006 and Crime No.235 of 2006 was registered only at 21.00 hrs on 31.08.2006, the arrest is stated to have been made on 15.06.2006 at 09.00 hrs and the crime number has been mentioned in the arrest memo and this apparent contradiction has been failed to be noticed by the Detaining Authority.

5. In the case reported in 2004-1-L.W.(Crl.) 20 (SARAVANAMUTHU v. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, NAGAPATTINAM DISTRICT, NAGAPATTINAM AND ANOTHER), where Justice Sirpurkar, as His Lordship then was, speaking for the Bench, observed :-

> "3. From this, it is obvious that the crime number came to be supplied to the whole affair only after 4'O clock or as the case may be at 4.30 p.m. Learned counsel for the petitioner however drew our attention to pages 22, 24 and 25 of the booklet. Page 22 is the Destruction Mahazar. She points out that in that Destruction Mahazar, the crime number is written as Crime No.365/2002. Page 24 is the Observation Mahazar which observation was supposed to have taken place at 3.30 p.m. but there also Crime Number appears in the third line. Page 25 is the sketch drawn on the spot. In this also, there appears a crime number again. From this, the learned counsel points out that at the time when these documents were executed, there was no crime number available as the crime number became available only after the police party reached the police station and registered the F.I.R. Therefore, this was obviously a manufactured case and this was bound to be taken into

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consideration by the Detaining Authority while considering all these aspects and his not having considered these vital aspects amounts to non-application of mind."

6. Similar view has been subsequently expressed by another Division Bench of this Court in H.C.P.No.217 of 2006 dated 13.06.2006 and H.C.P.No.1152 of 2006 dated 23.01.2007.

7. It is pertinent to point out that the respondents have not filed any counter affidavit explaining as to how the Crime number could be given in the arrest memo which was supposed to have been prepared at the time of arrest. The learned Additional Public Prosecutor is also unable to say as to why the said contention of the learned counsel for the petitioner should not be accepted.

8. The legal principle laid down in the above said decisions squarely applies to the facts of this case. The above said discrepancies pointed out by the learned counsel for the petitioner are glaring discrepancies available on the face of the record and staring at the face of the Detaining Authority but the same has been failed to be considered by the Detaining Authority which clearly indicates the total non-application of mind on the part of the Detaining Authority and which raises doubt in our minds as to whether the Detaining Authority has applied his mind to the materials placed before him at all. Therefore, we are constrained to accept the contention of the learned counsel for the petitioner and quash the order of detention.

9. Apart from the above said contentions the learned counsel for the petitioner put forth one another submission, namely, in the order of detention the Detaining Authority though has observed as follows,

"5. I am aware that Thiru. Mayakkannan, son of Pavadai is in remand in Sub Jail, Kallakurichi in Cr. No.258/2006 of Kachirapalayam Police Station and has not filed any bail application before the lower court or in the High Court till date. The Superintendent, Sub Jail, Kallakurichi is being requested to transfer him to the Central Prison, Cuddalore as detention order has been passed under Tamil Nadu Act 14/1982. However I am aware that there is a real possibility of his coming out on bail by filing a bail application before the same or higher court, since in similar cases bails are granted by the Courts after lapse of time."

the Detaining Authority has failed to apply his mind to the nature of the offences involved in Crime No.235 of 2006 which is the fourth adverse case registered against the detenu. The learned counsel pointed out that Crime No.235 of 2006 relates to occurrence that took place on 31.08.2006 and a case for offences under Sections 4(1)(aaa) and 4(1-A) of the T.N.P.Act 1937 had been registered and the case was under investigation on the date of passing of the order of detention and the detenu was not released on bail. In the said case the detenu was remanded to judicial custody on 15.09.2006 till 29.09.2006 by the Judicial Magistrate, Kallakurichi and the order of detention came to be passed on 26.09.2006 but the Detaining Authority had not adverted to the fact that the detenu being in Judicial custody in respect of Crime No.235 of 2006 which relates to equally serious offences under Sections 4(1)(aaa) and 4(1-A) of the T.N.P.Act, the chance of the accused coming out on bail was remote. According to the learned counsel the non-application of mind on the part of the Detaining Authority to this vital aspect vitiates the order of detention. In

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support of the above said contention, the learned counsel for the petitioner placed reliance upon the unreported decision of this Court in H.C.P.No.1296 of 2005 disposed on 27.03.2006. In the said case, there was no awareness indicated by the Detaining Authority regarding the fact that the detenu was also in custody in connection with another adverse case and reference was only made to the possibility of being released on bail in connection with ground case.

10. In the above decision, it is observed as follows:-

"7. In the light of the details referred to above, let us consider the awareness shown by the detaining authority. In the grounds of detention, the detaining authority, after referring to the first adverse case in Crime No.257/2005 on the file of T1 Ambattur Police Station dated 7.2.2005, has referred to the second adverse case in Crime No.2653/2005 on the file of T1 Ambattur Police Station dated 12.08.2005, which relates to an offence under Sections 147, 148, 392, 448, 506 (ii) IPC. After referring to the same, the detaining authority has narrated the ground case dated 13.8.2005 in Crime No.2666/2005 on the file of T1 Ambattur Police Station for the offence under Sections 147, 148, 341, 448, 427, 307 and 506(ii) IPC. After narration of those details, while considering the imminent possibility of the detenus coming out on bail, in paragraph 4 of the detention orders, the detaining authority has specifically stated that, "he was aware that the detenus viz., Arumugam and Left Sekar @ Lottai Sekar were in remand in T1 Ambattur Police Station Crime No.2666/2005 and they have not moved any bail petition so far". After finding that there was imminent possibility that they may come out on bail in the above cases by filing bail applications, since in similar cases, bail was usually granted by the Court, the detaining authority passed the orders of detention. Though the learned counsel has pointed out that inasmuch as the detaining authority has shown his awareness in respect of the ground case, which is graver in nature, in view of the fact that the detenus were remanded by an order of learned District Munsif-cum-Judicial Magistrate, Ambattur, not only in respect of the ground case in Crime No.2666/2005, but also in respect of the second adverse case in Crime No.2653/2005 and in the light of the other information as stated earlier viz., even the sponsoring authority has made a specific request for police custody in respect of both the crime numbers and orders were passed by the learned District Munsif-cum-Judicial Magistrate in respect of both the crime numbers, and further taking note of the fact that the Special Report of the sponsoring authority also refers to both the crime numbers, we are of the view, as rightly pointed out by the learned counsel for the petitioners, that the detaining authority ought to have considered the relevant fact viz., the detenus were also in remand in respect of Crime No.2653/2005. Even in the earlier portion of the grounds of detention, the detaining authority has merely narrated the occurrence that took place on 12.08.2005 which relates to the second adverse case, but there is absolutely no reference to the order of the learned District Munsif-cum-Judicial Magistrate remanding them even in respect of the said Crime No.2653/2005.

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8. Though the learned Government Advocate relied on certain decisions of this Court with reference to the said aspect, in the light of the factual position as narrated above, we are of the view that the non-consideration of the relevant factor that the accused/detenus had been remanded in connection with Crime No.2653/2005, which is the second adverse case, wherein the commission of serious offence had been alleged, has the effect of vitiating the conclusion arrived at by the detaining authority regarding the compelling necessary to pass the orders of detention. We, therefore, accept the said contention raised by the learned counsel for the petitioners and both the orders of detention are liable to be quashed and are accordingly quashed"

11. In our considered view the ratio of the decision above referred to squarely applies to this case. It is pertinent to point out that in the ground case i.e., Crime No.258 of 2006 the offences involved are under Sections 4(1)(i), 4(1)(aaa) and 4(1-A) of the T.N.P. Act and the fourth adverse case namely Crime No.235 of 2006 relates to offences under Sections 4(1)(aaa) and 4(1-A) of the T.N.P.Act. But there is absolutely no reference to the order of the Learned Judicial Magistrate, Kallakuruchi, remanding the detenu even in respect of Crime No.235 of 2006. In the light of the above said factual position, we are of the considered view that the non-consideration of the relevant factor that the accused/detenu had been remanded in connection with Crime No.235 of 2006, which is the fourth adverse case, wherein the commission of similar serious offences had been alleged, has the effect of vitiating the subjective satisfaction arrived at by the Detaining Authority regarding the compelling necessity to pass the order of detention. Had the Detaining Authority been made aware of the fact that the detenu was in custody in connection with the fourth adverse case also, it cannot be said with certainty that the Detaining Authority would have come to the very same conclusion regarding the possibility of the accused/detenu being enlarged on bail, since such aspect pertains to the subjective satisfaction of the Detaining Authority.

12. For the aforesaid reasons, we are constrained to quash the order of detention. This Habeas Corpus Petition is allowed and the order of detention is set-aside and the detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1. The District Magistrate & District Collector, Villupuram District, Villupuram
2. The Secretary to Government, Prohibition & Excise Department
Fort St. George, Chennai - 600 009.
3. The Superintendent, Central Prison, Cuddalore.
4. The Joint Secretary to Govt., Public [Law and Order], Fort St. George, Chennai 9.
5. The Public Prosecutor, High Court, Chennai.

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